

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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|-----------------------------|---|-----------------|
| DAVID L. JOHNSON, #255 052, | * | |
| Plaintiff, | * | |
| v. | * | 2:08-CV-876-TMH |
| | | (WO) |
| J.C. GILES, <i>et al.</i> , | * | |
| Defendants. | * | |

RECOMMENDATION OF THE MAGISTRATE JUDGE

On December 29, 2008 Plaintiff filed a Motion to Dismiss. Upon consideration of the motion, the court concludes that the motion is due to be granted. Furthermore, since the complaint has not been served, the court finds that this case is due to be dismissed without prejudice. *See* Rule 41(a)(1), *Federal Rules of Civil Procedure*.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that:

1. Plaintiff's Motion to Dismiss (*Doc. No. 4*) be GRANTED;
2. This case be DISMISSED without prejudice; and
3. No costs or fees be taxed in this case.

It is further

ORDERED that the parties are DIRECTED to file any objections to the said Recommendation on or before **January 20, 2009**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which a party objects.

Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done, this 6th day of January 2009.

/s/ Wallace Capel, Jr.

WALLACE CAPEL, JR.

UNITED STATES MAGISTRATE JUDGE